

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/481

<u>Applicant</u>	: Excel Joy Inc Limited
<u>Site</u>	: Lot 1584 B-G (Part) in D.D. 117, Tai Tong, Yuen Long, New Territories
<u>Site Area</u>	: 663 m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
<u>Zoning</u>	: “Recreation” (“REC”)
<u>Application</u>	: Temporary Open Storage of Used Bus for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary open storage of used bus for a period of 3 years (**Plan A-1**). According to the Notes of the OZP, ‘open storage’ is neither a Column 1 nor 2 use for the “REC” zone. However, according to the Covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP. The Site is currently occupied by the applied use without valid planning permission (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the proposed development is intended for open storage of about 12 used and decommissioned buses. The used buses will be stored at the Site for a prolonged period of time. Bus enthusiasts will visit the Site sparingly. No workshop activities will be carried out at the Site. Except for used and decommissioned buses, no other vehicles are allowed to enter/be parked at the Site. The applicant undertakes to submit a drainage proposal and implement the proposed drainage facilities at their own expense. Plans showing the vehicular access leading to the Site, site layout, and landscape proposal submitted by the applicant are at **Drawings A-1 to A-3** respectively.
- 1.3 The major development parameters of the application are summarised as follows:

Site Area	663m ² (about)
Total Floor Area (non-domestic)	26m ² (about)
No. and Height of Structures	2 <ul style="list-style-type: none"> • One for ancillary site office (2.5m, 1 storey) • One for canopy (2.5m, 1 storey)
Parking Spaces	--
Loading/Unloading Spaces	--
Operation Hours	9:00 a.m. to 6:00 p.m. Mondays to Saturdays, with no operation on Sundays and Public Holidays

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application Form with plans received on 22.8.2019 **(Appendix I)**
- (b) Further Information received on 10.10.2019 clarifying the condition of stored buses and operation details **(Appendix Ia)**
[accepted and exempted from publication and recounting requirements]

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Section 7 of Application Form at **Appendix I** and Further Information at **Appendix Ia**. They can be summarised as follows:

- (a) The Site is located near an “Open Storage” (“OS”) zone to its north. The proposed development is compatible with the surrounding environment which mainly consists of warehouses and open storage yards.
- (b) The proposed use is not a high traffic-generating use. The development will not cause adverse environmental, visual, traffic or drainage impacts on the surrounding area.

3. **Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is not a “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting a notice of the application outside the Site and sending the notice to the Shap Pat Heung Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Town Planning Board Guidelines**

The Town Planning Board Guidelines for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13E) are relevant to the application. The Site falls within

Category 3 areas under TPB PG-No. 13E promulgated by the Board on 17.10.2008. The relevant extract of the Guidelines is attached at **Appendix II**.

5. Background

The Site is subject to planning enforcement action against unauthorised development (UD) involving storage use. Enforcement Notice (EN) was issued to the concerned parties on 19.6.2019 requiring discontinuation of the UD. Upon expiry of the EN on 19.8.2019, the UD on site has not been discontinued. Further enforcement action is being considered for the case.

6. Previous Application

The Site was the subject of one previous application (No. A/YL-TT/15) when it was zoned "Agriculture" on the then draft Tai Tong OZP No. S/YL-TT/1. The application covered a much larger site for rural theme park, which was approved with conditions on review by the Board on 31.1.1997 for the reasons that the proposed development was compatible with the planning intention; a large portion of the vegetation was preserved and the agricultural activities will be retained; the proposed development was compatible with the surrounding area; there was no adverse traffic and environmental impact; and other technical issues and requirements were not insurmountable. The proposal did not commence and the permission lapsed on 1.2.1999. The Site and the wider area were later rezoned as "REC" in 1998/99. Details of the application are summarised in **Appendix III** and the site boundary is shown on **Plan A-1**.

7. Similar Application

- 7.1 There is no similar application for temporary open storage use within the same "REC" zone.
- 7.2 For Members' information, application No. A/YL-TT/482 for temporary open storage of construction materials with ancillary warehouse to the immediate northwest of the Site and within the same "REC" zone on the OZP will also be considered at this meeting (**Plan A-1**).

8. The Site and Its Surrounding Areas (Plans A-1 to A-4)

8.1 The Site is:

- (a) accessible via a local track leading from Tai Tong Shan Road to its east (**Plan A-1 and Drawing A-1**);
- (b) partly paved and fenced off; and
- (c) currently occupied by the applied use without valid planning permission.

8.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) mixed in character but predominantly rural in nature, with unused/vacant land/structures intermixed with open storage/storage yards, warehouse, recreation facilities, residential structures and graves;
- (b) there are existing residential structures in the vicinity of the Site with the nearest one located about 70m to the northwest (**Plan A-2**);
- (c) to the south of the Site is a stream, while further southeast is the Tai Tong Organic EcoPark (also known as Tai Tong Lychee Valley) (**Plan A-3**); and
- (d) apart from the warehouse and open storage/storage yards in the nearby “OS” zone and the recreation facilities in the subject “REC” zone, the aforementioned open storage/ storage yards to the east, southeast and west of the Site are suspected UD subject to enforcement action taken by the Planning Authority.

9. Planning Intention

The planning intention of the “REC” zone is primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission.

10. Comments from Relevant Government Departments

10.1 The following government departments have been consulted and their views on the application are summarised as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The Site is accessible from Tai Tong Shan Road via Government land (GL) and private land. Her office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to her office to permit the structures to be erected or regularise any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s)

will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by her department acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by her department.

Traffic

10.1.2 Comments of the Commissioner for Transport (C for T):

- (a) The land status of the access road/path/track leading to the Site from Tai Tong Shan Road should be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track should be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (c) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) His department is not/shall not be responsible for the maintenance of any access connecting the Site and Tai Tong Shan Road.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads or exclusive road drains.

Environment

10.1.4 Comments of the Director of Environmental Protection (DEP):

- (a) There was no environmental complaint concerning the Site received in the past 3 years.
- (b) Should the planning application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimise any potential environmental nuisances.

Agriculture and Nature Conservation

10.1.5 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) As the Site is paved or disturbed, she has no adverse comment on the application from nature conservation point of view.
- (b) Nevertheless, should the application be approved, the applicant is advised to implement appropriate measures to avoid causing pollution or disturbance to the nearby watercourse.

Landscape

10.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) She has reservations on the application from landscape planning perspective.
- (b) With reference to the site visit conducted by her office on 10.9.2019, the Site is formed with hard paving. No tree is observed within the Site. The applied use appears to be already in operation. The Site is situated in an area of rural landscape character with some open storage uses in the immediate surrounding while woodlands and farmlands are to its further north and south. The applied use is not entirely compatible with the surrounding landscape character.
- (c) When comparing the aerial photo of 2018 (**Plan A-3**) and the site photos, the Site was originally used for agriculture but had been cleared and formed in 2019. Landscape impact had taken place.
- (d) Although further landscape impact caused by the development is not anticipated, approval of the application would set an undesirable precedent to encourage other similar development to blanket clear and form the site prior to obtaining planning permission. The cumulative effect of which would result in further degradation of the rural landscape character of the area.
- (e) As the Site is not located at a landscape sensitive zone and not facing any prominent public frontage, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

Drainage

10.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the submission of a drainage proposal and the implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

Fire Safety

10.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the proposal subject to fire services installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. In addition, the applicant should also be advised on the following points:
 - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - (ii) The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
 - (iii) The good practice guidelines for open storage attached in **Appendix V** should be adhered to.
- (c) Moreover, having considered the nature of the open storage, an approval condition requiring the provision of fire extinguisher(s) within 6 weeks from the date of planning approval should be incorporated if the application is approved. To address this approval condition, the applicant is required to submit a valid fire certificate (FS 251) to his department for approval.
- (d) However, the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

10.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorised building works (UBW) under the BO. An Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an

acceptance of any existing building works or UBW on the Site under the BO.

- (c) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (d) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

District Officer's Comments

10.1.10 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

Her office has not received any locals' comment on the application and she has no comment from departmental point of view.

10.2 The following government departments have no comment to the application:

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (d) Commissioner of Police (C of P).

11. Public Comments Received During the Statutory Publication Period

11.1 On 30.8.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 20.9.2019, a total of 46 comments were received from residents of Tai Tong Tsuen and members of the public (extracted at **Appendices IV-1 to IV-6**). A full set of all the public comments received are deposited at the Secretariat of the Board for Members' inspection and reference.

11.2 Amongst the public comments received, 43 of them are in the form of standard comments (samples extracted at **Appendices IV-1 to IV-3**) supporting the application on the grounds that the Site is located near the "OS" zone; approval of the application would provide storage space of used buses which can be refurbished for other uses in the future; the proposed operation will not generate adverse environmental impacts; the proposal would add interest to the local area; and the development is not incompatible with the surrounding areas comprising mainly open storage and warehouse uses.

11.3 The remaining 3 public comments (**Appendices IV-4 to IV-6**) objected to the application on the grounds that the proposed development is not in line with the planning intention of the "REC" zone; approval of the application would set an undesirable precedent; and the cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

12. Planning Considerations and Assessments

- 12.1 The subject application is for temporary open storage of used bus for a period of 3 years at a site zoned “REC” on the OZP. The applied use is not in line with the planning intention of the “REC” zone, which is primarily for recreational developments for the use of the general public and the development of active and/or passive recreation and tourism/eco-tourism. No strong planning justifications have been provided in the submission for a departure from the planning intention, even on a temporary basis.
- 12.2 The surrounding area is predominantly rural in nature with unused/vacant land on either sides of a natural stream, and rural recreation facilities to the further southeast in the subject “REC” zone (**Plans A-2 and A-3**). Although there are open storage/storage yards and warehouse in the vicinity, most of them are suspected UD subject to enforcement action taken by the Planning Authority, except for those operations located in the nearby “OS” zone with a materially different planning intention. The proposed development is considered not compatible with the rural recreational character of the area, including the agricultural land to its west and a stream and Tai Tong Organic EcoPark to its south and further southeast.
- 12.3 According to TPB PG-No. 13E, the Site falls within Category 3 areas. The following guidelines are relevant:

Category 3 areas: applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. Sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the fresh applications relevant technical assessments/proposals to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. Planning permission could be granted on a temporary basis up to a maximum period of 3 years, subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions.

The application is not in line with TPB PG-No. 13E in that the Site falls within Category 3 areas; no previous planning approval for similar open storage uses have been granted to the Site; there are concerns on the application on landscaping aspect; and no assessment has been submitted to demonstrate that the proposed use would not generate adverse landscaping impacts on the surrounding areas.

- 12.4 CTP/UD&L, PlanD has reservations on the proposal as the applied use would degrade the rural landscape character of the area. Although further landscape impact caused by the development is not anticipated, approval of the application would set an undesirable precedent to encourage other similar development to blanket clear and form the Site prior to obtaining planning permission.
- 12.5 There is no similar application for open storage use within the subject “REC” zone. Approval of the current application would set an undesirable precedent and attract similar applications within the area. The cumulative impact would result in a general degradation of the rural landscape character of the area.

12.6 There are 46 public comments, including 3 objecting comments, received on the application during the statutory publication period as summarised in paragraph 11. The planning considerations and assessments in paragraphs 12.1 to 12.5 above are relevant.

13. Planning Department's Views

13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments in paragraph 11 above, the Planning Department does not support the application for the following reasons:

- (a) the applied use is not in line with the planning intention of the “REC” zone which is intended primarily for recreational developments for the use of the general public and the development of active and/or passive recreation and tourism/eco-tourism. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the applied use is incompatible with the rural character of the vicinity;
- (c) the applied use is not in line with the Town Planning Board Guidelines No. 13E “Application for Open Storage and Port Back-up Uses” in that no previous approval for open storage has been granted to the Site, the applicant fails to demonstrate that the proposed development would not generate adverse landscape impact and there is no exceptional circumstance to justify the development in the Category 3 areas; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “REC” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 18.10.2022. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no workshop activities, as proposed by the applicant, is allowed on the Site at any time during the planning approval period;
- (d) only used and decommissioned buses are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;

- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the existing boundary fencing on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of a drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 18.4.2020;
- (h) in relation to (g) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 18.7.2020;
- (i) in relation to (h) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (j) the provision of fire extinguisher(s) with valid fire certificate (FS 251) within **6** weeks from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 29.11.2019;
- (k) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 18.4.2020;
- (l) in relation to (k) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 18.7.2020;
- (m) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (i) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (n) if any of the above planning conditions (g), (h), (j), (k) or (l) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

The recommended advisory clauses are at **Appendix VI**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

15. Attachments

Appendix I	Application Form with plans received on 22.8.2019
Appendix Ia	Further Information received on 10.10.2019 clarifying the condition of stored buses and operation details
Appendix II	Relevant extract of the Town Planning Board Guidelines for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13E)
Appendix III	Previous Application covering the Site
Appendices IV-1 to 6	Public Comments Received During Statutory Publication Period
Appendix V	The Good Practice Guidelines for Open Storage Sites
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape Plan
Plan A-1	Location Plan with Previous Application
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2019**